PCT Services, Inc. *and* International Union of Operating Engineers, Local Union #147, AFL–CIO. Case 5–CA–31610

March 24, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and first amended charge filed by the Union on November 21 and December 5, 2003, respectively, the General Counsel issued the complaint on January 29, 2004, against PCT Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act.

Thereafter, on May 4, 2004, the Regional Director approved a bilateral informal settlement agreement entered into by the Respondent and the Union. Among other things, the settlement required the Respondent to make whole 27 bargaining unit employees by paying them certain amounts of backpay and health and welfare benefits, plus interest, and to make contributions to the Union's pension fund on behalf of the employees. The settlement agreement also required the Respondent to post a notice to employees that set forth its obligations under the settlement agreement. In addition, the settlement agreement contained the following provision:

> COMPLIANCE WITH NOTICE–The Charged Party will comply with all the terms and provisions of said Notice. The Charged Party will notify the Region in writing upon completion of all affirmative obligations. In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order. Subsequently, a judgment from a U.S. Court of Appeals may be entered ex parte.

On June 11, 2004, the Respondent posted the notice to employees in accordance with the terms of the settlement agreement. Thereafter, on or about September 8, 2004, checks representing backpay, benefits, and interest payments due under the terms of the settlement agreement were forwarded to the Regional Office. The checks supplied by the Respondent, however, were not backed by funds in the bank account on which they were drawn.

By letter dated October 5, 2004, the compliance officer for Region 5 advised the Respondent that it had failed to comply with the terms of the settlement agreement by supplying checks that were not backed by sufficient funds. The letter also stated that the Respondent's failure to remit the moneys owed by October 19, 2004, could result in a recommendation that the Regional Director file a Motion for Summary Judgment as allowed under the settlement agreement. To date, the Respondent has neither replied to the compliance officer's letter nor fully complied with the terms of the settlement agreement by satisfying its make-whole obligations to the employees named in the settlement agreement.[1]

On December 6, 2004, the General Counsel filed a Motion for Summary Judgment with the Board. On December 9, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the General Counsel's motion, the Respondent has failed to comply with the settlement agreement approved by the Regional Director on May 4, 2004, by failing to remit the agreed-upon backpay and benefit payment amounts due the employees listed in the settlement agreement. Consequently, pursuant to the noncompliance provision of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia corporation, has maintained an office and place of business at Fort Eustis, Virginia (the Respondent's facility), where it has been engaged as a contractor providing hospital and housekeeping services.

[1] In addition to posting the required Notice, the Respondent was required, under the settlement agreement, to make pension fund contributions on behalf of the 27 unit employees. Because the General Counsel's Motion does not seek an order with respect to pension fund contributions, we assume that the Respondent has complied with that aspect of the settlement agreement.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 for the United States Department of the Army, at Fort Eustis, Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Union of Operating Engineers, Local Union #147, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Melvin Johnson has held the position of the Respondent's general manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All of the Respondent's Housekeepers located at Fort Eustis, Virginia, and covered by Army Contract *DABT5700-C-0005*, and its successor contracts; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 2003 through May 31, 2005 (the Agreement).

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Agreement, described above, contains the following provisions:

> (a) ARTICLE XXIV – WAGES
>
> Section 1. The regular straight time hourly rates for all employees under this contract shall be as follows:
>
> 6/01/03 -– Housekeepers $9.65
>
> 6/01/03 –- Group Leaders $10.40
>
> ARTICLE XXVII – HEALTH AND WELFARE
>
> Employees shall receive health and welfare benefits hourly in the amount shown in the following schedule:
>
> 6/1/03 -- $2.32
>
> ARTICLE XXVIII – PENSION
>
> Section 1. Commencing on the 1st day of June, 2003 and for the duration of this Collective Bargaining Agreement, including any renewals or extension thereof, the Company agrees that for each hour of pay paid to each employee to whom this Agreement is applicable, for any reason provided for in this Collective Bargaining Agreement, it will pay to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers the sum of ninety-five cents ($.95) per hour.

Since on or about June 1, 2003, the Respondent has failed and refused to implement the terms and conditions of employment described above, as required by the Agreement.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, and without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since on or about June 1, 2003, to implement the provisions of the parties' collective-bargaining agreement covering wages, health and welfare benefits, and pension payments, we shall order the Respondent to adhere to those contractual provisions and to make the unit employees whole for losses they have suffered as a result of the Respondent's conduct. The only affirmative remedy sought by the General Counsel is the payment to unit employees of the amounts set forth in the backpay table attached to the parties' settlement agreement, which requires the payment of a total of $10,607.76, plus interest, to the 27

named employees. In these circumstances, we will limit the make-whole remedy accordingly.

ORDER

The National Labor Relations Board orders that the Respondent, PCT Services, Inc., Fort Eustis, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union of Operating Engineers, Local Union #147, AFL–CIO, as the exclusive bargaining representative of the employees in the appropriate bargaining unit by failing to implement articles XXIV (Wages), XXVII (Health and Welfare), and XXVIII (Pension) of its collective-bargaining agreement with the Union. The appropriate unit is:

> All of the Respondent's Housekeepers located at Fort Eustis, Virginia, and covered by Army Contract *DABT5700-C-0005*, and its successor contracts; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately remit $10,607.76, plus interest, to Region 5 to be disbursed to the unit employees, in accordance with the terms of the settlement agreement.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 24, 2005

Robert M. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD